MASTER
NEGATIVE
NO. 94-82086-7

# COPYRIGHT STATEMENT

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted materials including foreign works under certain conditions. In addition, the United States extends protection to foreign works by means of various international conventions, bilateral agreements, and proclamations.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

The Columbia University Libraries reserve the right to refuse to accept a copying order if, in its judgement, fulfillment of the order would involve violation of the copyright law.

Author:
U.S. President
(1909-1913: Taft)
Title:
Message of the President of the United States...
Place:
Washington, D.C.
Date:
1911

94-82086-7

MASTER NEGATIVE #

COLUMBIA UNIVERSITY LIBRARIES
PRESERVATION DIVISION

# BIBLIOGRAPHIC MICROFORM TARGET

ORIGINAL MATERIAL AS FILMED - EXISTING BIBLIOGRAPHIC RECORD

BUSINESS
225
Un35

U. S. *President, 1909–1913.* (*Taft*)

Message of the President of the United States, communicated to the two houses of Congress at the beginning of the second session Sixty-second Congress, December 5, 1911, on the anti-trust statute. Washington [Govt. print. off.] 1911.

43 p. 24½ cm.

"Appendix A. Suits brought and prosecutions instituted by the United States under the Sherman antitrust law": p. 19–43.

1. Trusts, Industrial—Law. 2. Sherman anti-trust law, 1890. I. Title.

Library of Congress HD2775.A4 1911 11-35995
Copy 2.

RESTRICTIONS ON USE:

## TECHNICAL MICROFORM DATA

FILM SIZE: 35mm REDUCTION RATIO: 12x IMAGE PLACEMENT: IA (IIA) IB IIB

DATE FILMED: 5/25/94 INITIALS: DG, KLB

TRACKING # : MSH 01044

FILMED BY PRESERVATION RESOURCES, BETHLEHEM, PA.

2.5 mm 1234567890

2.0 mm ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz1234567890

1.5 mm ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz1234567890

# PM-MGP 13″x18″
# METRIC GENERAL PURPOSE TARGET
# PHOTOGRAPHIC

150 mm

100 mm

A5

A4

1.0

1.1

1.25

1.4

1.6

1.8

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz
1234567890

1.0 mm

1.5 mm

2.0 mm

2.5 mm

## PRECISION℠ RESOLUTION TARGETS

Century

A&P

1303 Geneva Avenue
St. Paul, MN 55119

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz
1234567890

4.5 mm

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz1234567890

3.5 mm

# MESSAGE

## OF THE PRESIDENT OF THE UNITED STATES

COMMUNICATED TO THE TWO HOUSES OF CONGRESS AT THE BEGINNING OF THE SECOND SESSION SIXTY-SECOND CONGRESS

DECEMBER 5
1911

ON THE . . .

## ANTI-TRUST STATUTE

WASHINGTON: 1911

D225-Un35

D225 Un35
Columbia University
in the City of New York
LIBRARY
School of Business

# MESSAGE
OF
# THE PRESIDENT
OF
# THE UNITED STATES

COMMUNICATED TO THE TWO HOUSES OF CONGRESS AT THE BEGINNING OF THE SECOND SESSION SIXTY-SECOND CONGRESS : : : DECEMBER 5, 1911

## ON THE ANTI-TRUST STATUTE

COLUMBIA UNIVERSITY LIBRARY

WASHINGTON
1911

Business

D225
Un35

# MESSAGE.

*To the Senate and House of Representatives:*

This message is the first of several which I shall send to Congress during the interval between the opening of its regular session and its adjournment for the Christmas holidays. The amount of information to be communicated as to the operations of the Government, the number of important subjects calling for comment by the Executive, and the transmission to Congress of exhaustive reports of special commissions, make it impossible to include in one message of a reasonable length a discussion of the topics that ought to be brought to the attention of the National Legislature at its first regular session.

## THE ANTI-TRUST LAW—THE SUPREME COURT DECISIONS.

In May last the Supreme Court handed down decisions in the suits in equity brought by the United States to enjoin the further maintenance of the Standard Oil Trust and of the American Tobacco Trust, and to secure their dissolution. The decisions are epoch-making and serve to advise the business world authoritatively of the scope and operation of the anti-trust act of 1890. The decisions do not depart in any substantial way from the previous decisions of the court in construing and applying this important statute, but they clarify those decisions by further defining the already admitted exceptions to the literal construction of the act. By the decrees, they furnish a useful precedent as to the proper method of dealing with the capital and property of illegal trusts. These decisions suggest the need and wisdom of additional or supplemental legislation to make it easier for the entire business community to square with the rule of action and legality thus finally established and to preserve the benefit, freedom, and spur of reasonable competition without loss of real efficiency or progress.

NO CHANGE IN THE RULE OF DECISION—MERELY IN ITS FORM OF EXPRESSION.

The statute in its first section declares to be illegal "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations," and in the second, declares guilty of a misdemeanor "every person who shall monopolize or attempt to monopolize or combine or conspire with any other person to monopolize any part of the trade or commerce of the several States or with foreign nations."

In two early cases, where the statute was invoked to enjoin a transportation rate agreement between interstate railroad companies, it was held that it was no defense to show that the agreement as to rates complained of was reasonable at common law, because it was said that the statute was directed against all contracts and combinations in restraint of trade whether reasonable at common law or not. It was plain from the record, however, that the contracts complained of in those cases would not have been deemed reasonable at common law. In subsequent cases the court said that the statute should be given a reasonable construction and refused to include within its inhibition, certain contractual restraints of trade which it denominated as incidental or as indirect.

These cases of restraint of trade that the court excepted from the operation of the statute were instances which, at common law, would have been called reasonable. In the Standard Oil and Tobacco cases, therefore, the court merely adopted the tests of the common law, and in defining exceptions to the literal application of the statute, only substituted for the test of being incidental or indirect, that of being reasonable, and this, without varying in the slightest the actual scope and effect of the statute. In other words, all the cases under the statute which have now been decided would have been decided the same way if the court had originally accepted in its construction the rule at common law.

It has been said that the court, by introducing into the construction of the statute common-law distinctions, has emasculated it. This is obviously untrue. By its judgment every



contract and combination in restraint of interstate trade made with the purpose or necessary effect of controlling prices by stifling competition, or of establishing in whole or in part a monopoly of such trade, is condemned by the statute. The most extreme critics can not instance a case that ought to be condemned under the statute which is not brought within its terms as thus construed.

The suggestion is also made that the Supreme Court by its decision in the last two cases has committed to the court the undefined and unlimited discretion to determine whether a case of restraint of trade is within the terms of the statute. This is wholly untrue. A reasonable restraint of trade at common law is well understood and is clearly defined. It does not rest in the discretion of the court. It must be limited to accomplish the purpose of a lawful main contract to which, in order that it shall be enforceable at all, it must be incidental. If it exceed the needs of that contract, it is void.

The test of reasonableness was never applied by the court at common law to contracts or combinations or conspiracies in restraint of trade whose purpose was or whose necessary effect would be to stifle competition, to control prices, or establish monopolies. The courts never assumed power to say that such contracts or combinations or conspiracies might be lawful if the parties to them were only moderate in the use of the power thus secured and did not exact from the public too great and exorbitant prices. It is true that many theorists, and others engaged in business violating the statute, have hoped that some such line could be drawn by courts; but no court of authority has ever attempted it. Certainly there is nothing in the decisions of the latest two cases from which such a dangerous theory of judicial discretion in enforcing this statute can derive the slightest sanction.

FORCE AND EFFECTIVENESS OF STATUTE A MATTER OF GROWTH.

We have been twenty-one years making this statute effective for the purposes for which it was enacted. The Knight case was discouraging and seemed to remit to the States the whole available power to attack and suppress the evils of the trusts. Slowly, however, the error of that judgment was corrected, and

only in the last three or four years has the heavy hand of the law been laid upon the great illegal combinations that have exercised such an absolute dominion over many of our industries. Criminal prosecutions have been brought and a number are pending, but juries have felt averse to convicting for jail sentences, and judges have been most reluctant to impose such sentences on men of respectable standing in society whose offense has been regarded as merely statutory. Still, as the offense becomes better understood and the committing of it partakes more of studied and deliberate defiance of the law, we can be confident that juries will convict individuals and that jail sentences will be imposed.

### THE REMEDY IN EQUITY BY DISSOLUTION.

In the Standard Oil case the Supreme and Circuit Courts found the combination to be a monopoly of the interstate business of refining, transporting, and marketing petroleum and its products, effected and maintained through thirty-seven different corporations, the stock of which was held by a New Jersey company. It in effect commanded the dissolution of this combination, directed the transfer and *pro rata* distribution by the New Jersey company of the stock held by it in the thirty-seven corporations to and among its stockholders; and the corporations and individual defendants were enjoined from conspiring or combining to restore such monopoly; and all agreements between the subsidiary corporations tending to produce or bring about further violations of the act were enjoined.

In the Tobacco case, the court found that the individual defendants, twenty-nine in number, had been engaged in a successful effort to acquire complete dominion over the manufacture, sale, and distribution of tobacco in this country and abroad, and that this had been done by combinations made with a purpose and effect to stifle competition, control prices, and establish a monopoly, not only in the manufacture of tobacco, but also of tin-foil and licorice used in its manufacture and of its products of cigars, cigarettes, and snuffs. The tobacco suit presented a far more complicated and difficult case than the Standard Oil suit for a decree which would



effectuate the will of the court and end the violation of the statute. There was here no single holding company as in the case of the Standard Oil Trust. The main company was the American Tobacco Company, a manufacturing, selling, and holding company. The plan adopted to destroy the combination and restore competition involved the redivision of the capital and plants of the whole trust between some of the companies constituting the trust and new companies organized for the purposes of the decree and made parties to it, and numbering, new and old, fourteen.

### SITUATION AFTER READJUSTMENT.

The American Tobacco Company (old), readjusted capital, $92,000,000; the Liggett & Meyers Tobacco Company (new), capital, $67,000,000; the P. Lorillard Company (new), capital, $47,000,000; and the R. J. Reynolds Tobacco Company (old), capital, $7,525,000, are chiefly engaged in the manufacture and sale of chewing and smoking tobacco and cigars. The former one tin-foil company is divided into two, one of $825,000 capital and the other of $400,000. The one snuff company is divided into three companies, one with a capital of $15,000,000, another with a capital of $8,000,000, and a third with a capital of $8,000,000. The licorice companies are two, one with a capital of $5,758,300 and another with a capital of $2,000,000. There is, also, the British-American Tobacco Company, a British corporation, doing business abroad with a capital of $26,000,000, the Porto Rican Tobacco Company, with a capital of $1,800,000, and the corporation of United Cigar Stores, with a capital of $9,000,000.

Under this arrangement, each of the different kinds of business will be distributed between two or more companies with a division of the prominent brands in the same tobacco products, so as to make competition not only possible but necessary. Thus the smoking-tobacco business of the country is divided so that the present independent companies have 21.39 per cent, while the American Tobacco Company will have 33.08 per cent, the Liggett & Meyers 20.05 per cent, the Lorillard Company 22.82 per cent, and the Reynolds Company 2.66 per cent. The

stock of the other thirteen companies, both preferred and common, has been taken from the defendant American Tobacco Company and has been distributed among its stockholders. All covenants restricting competition have been declared null and further performance of them has been enjoined. The preferred stock of the different companies has now been given voting power which was denied it under the old organization. The ratio of the preferred stock to the common was as 78 to 40. This constitutes a very decided change in the character of the ownership and control of each company.

In the original suit there were twenty-nine defendants who were charged with being the conspirators through whom the illegal combination acquired and exercised its unlawful dominion. Under the decree these defendants will hold amounts of stock in the various distributee companies ranging from 41 per cent as a maximum to 28½ per cent as a minimum, except in the case of one small company, the Porto Rican Tobacco Company, in which they will hold 45 per cent. The twenty-nine individual defendants are enjoined for three years from buying any stock except from each other, and the group is thus prevented from extending its control during that period. All parties to the suit, and the new companies who are made parties, are enjoined perpetually from in any way effecting any combination between any of the companies in violation of the statute by way of resumption of the old trust. Each of the fourteen companies is enjoined from acquiring stock in any of the others. All these companies are enjoined from having common directors or officers, or common buying or selling agents, or common offices, or lending money to each other.

### SIZE OF NEW COMPANIES.

Objection was made by certain independent tobacco companies that this settlement was unjust because it left companies with very large capital in active business, and that the settlement that would be effective to put all on an equality would be a division of the capital and plant of the trust into small fractions in amount more nearly equal to that of each of the independent companies. This contention results from a misunderstanding of the anti-trust law and its purpose. It is not intended thereby to prevent the accumulation of large capital in business enterprises in which such a combination can secure reduced cost of production, sale, and distribution. It is directed against such an aggregation of capital only when its purpose is that of stifling competition, enhancing or controlling prices, and establishing a monopoly. If we shall have by the decree defeated these purposes and restored competition between the large units into which the capital and plant have been divided, we shall have accomplished the useful purpose of the statute.



### CONFISCATION NOT THE PURPOSE OF THE STATUTE.

It is not the purpose of the statute to confiscate the property and capital of the offending trusts. Methods of punishment by fine or imprisonment of the individual offenders, by fine of the corporation or by forfeiture of its goods in transportation, are provided, but the proceeding in equity is a specific remedy to stop the operation of the trust by injunction and prevent the future use of the plant and capital in violation of the statute.

### EFFECTIVENESS OF DECREE.

I venture to say that not in the history of American law has a decree more effective for such a purpose been entered by a court than that against the Tobacco Trust. As Circuit Judge Noyes said in his judgment approving the decree:

"The extent to which it has been necessary to tear apart this combination and force it into new forms with the attendant burdens ought to demonstrate that the Federal anti-trust statute is a drastic statute which accomplishes effective results; which so long as it stands on the statute books must be obeyed, and which can not be disobeyed without incurring far-reaching penalties. And, on the other hand, the successful reconstruction of this organization should teach that the effect of enforcing this statute is not to destroy, but to reconstruct; not to demolish, but to re-create in accordance with the conditions which the Congress has declared shall exist among the people of the United States."

### COMMON-STOCK OWNERSHIP.

It has been assumed that the present *pro rata* and common ownership in all these companies by former stockholders of the trust would insure a continuance of the same old single control of all the companies into which the trust has by decree been disintegrated. This is erroneous and is based upon the assumed inefficacy and innocuousness of judicial injunctions. The companies are enjoined from cooperation or combination; they have different managers, directors, purchasing and sales agents. If all or many of the numerous stockholders, reaching into the thousands, attempt to secure concerted action of the companies with a view to the control of the market, their number is so large that such an attempt could not well be concealed, and its prime movers and all its participants would be at once subject to contempt proceedings and imprisonment of a summary character. The immediate result of the present situation will necessarily be activity by all the companies under different managers, and then competition must follow, or there will be activity by one company and stagnation by another. Only a short time will inevitably lead to a change in ownership of the stock, as all opportunity for continued cooperation must disappear. Those critics who speak of this disintegration in the trust as a mere change of garments have not given consideration to the inevitable working of the decree and understand little the personal danger of attempting to evade or set at naught the solemn injunction of a court whose object is made plain by the decree and whose inhibitions are set forth with a detail and comprehensiveness unexampled in the history of equity jurisprudence.

### VOLUNTARY REORGANIZATIONS OF OTHER TRUSTS AT HAND.

The effect of these two decisions has led to decrees dissolving the combination of manufacturers of electric lamps, a southern wholesale grocers' association, an interlocutory decree against the Powder Trust with directions by the circuit court compelling dissolution, and other combinations of a similar history are now negotiating with the Department of Justice looking to



a disintegration by decree and reorganization in accordance with law. It seems possible to bring about these reorganizations without general business disturbance.

### MOVEMENT FOR REPEAL OF THE ANTI-TRUST LAW.

But now that the anti-trust act is seen to be effective for the accomplishment of the purpose of its enactment, we are met by a cry from many different quarters for its repeal. It is said to be obstructive of business progress, to be an attempt to restore old-fashioned methods of destructive competition between small units, and to make impossible those useful combinations of capital and the reduction of the cost of production that are essential to continued prosperity and normal growth.

In the recent decisions the Supreme Court makes clear that there is nothing in the statute which condemns combinations of capital or mere bigness of plant organized to secure economy in production and a reduction of its cost. It is only when the purpose or necessary effect of the organization and maintenance of the combination or the aggregation of immense size are the stifling of competition, actual and potential, and the enhancing of prices and establishing a monopoly, that the statute is violated. Mere size is no sin against the law. The merging of two or more business plants necessarily eliminates competition between the units thus combined, but this elimination is in contravention of the statute only when the combination is made for purpose of ending this particular competition in order to secure control of, and enhance, prices and create a monopoly.

### LACK OF DEFINITENESS IN THE STATUTE.

The complaint is made of the statute that it is not sufficiently definite in its description of that which is forbidden, to enable business men to avoid its violation. The suggestion is, that we may have a combination of two corporations, which may run on for years, and that subsequently the Attorney General may conclude that it was a violation of the statute, and that which was supposed by the combiners to be innocent then turns out to be a combination in violation of the statute. The answer to this hypothetical case is that when men attempt to amass

such stupendous capital as will enable them to suppress competition, control prices and establish a monopoly, they know the purpose of their acts. Men do not do such a thing without having it clearly in mind. If what they do is merely for the purpose of reducing the cost of production, without the thought of suppressing competition by use of the bigness of the plant they are creating, then they can not be convicted at the time the union is made, nor can they be convicted later, unless it happen that later on they conclude to suppress competition and take the usual methods for doing so, and thus establish for themselves a monopoly. They can, in such a case, hardly complain if the motive which subsequently is disclosed is attributed by the court to the original combination.

NEW REMEDIES SUGGESTED.

Much is said of the repeal of this statute and of constructive legislation intended to accomplish the purpose and blaze a clear path for honest merchants and business men to follow. It may be that such a plan will be evolved, but I submit that the discussions which have been brought out in recent days by the fear of the continued execution of the anti-trust law have produced nothing but glittering generalities and have offered no line of distinction or rule of action as definite and as clear as that which the Supreme Court itself lays down in enforcing the statute.

SUPPLEMENTAL LEGISLATION NEEDED—NOT REPEAL OR AMENDMENT.

I see no objection—and indeed I can see decided advantages—in the enactment of a law which shall describe and denounce methods of competition which are unfair and are badges of the unlawful purpose denounced in the anti-trust law. The attempt and purpose to suppress a competitor by underselling him at a price so unprofitable as to drive him out of business, or the making of exclusive contracts with customers under which they are required to give up association with other manufacturers, and numerous kindred methods for stifling competition and effecting monopoly, should be described with sufficient accuracy in a criminal statute on the one hand to enable the Government to shorten its task by prosecuting single



misdemeanors instead of an entire conspiracy, and, on the other hand, to serve the purpose of pointing out more in detail to the business community what must be avoided.

FEDERAL INCORPORATION RECOMMENDED.

In a special message to Congress on January 7, 1910, I ventured to point out the disturbance to business that would probably attend the dissolution of these offending trusts. I said:

"But such an investigation and possible prosecution of corporations whose prosperity or destruction affects the comfort not only of stockholders but of millions of wage earners, employees, and associated tradesmen must necessarily tend to disturb the confidence of the business community, to dry up the now flowing sources of capital from its places of hoarding, and produce a halt in our present prosperity that will cause suffering and strained circumstances among the innocent many for the faults of the guilty few. The question which I wish in this message to bring clearly to the consideration and discussion of Congress is whether, in order to avoid such a possible business danger, something can not be done by which these business combinations may be offered a means, without great financial disturbance, of changing the character, organization, and extent of their business into one within the lines of the law under Federal control and supervision, securing compliance with the anti-trust statute.

"Generally, in the industrial combinations called 'trusts,' the principal business is the sale of goods in many States and in foreign markets; in other words, the interstate and foreign business far exceeds the business done in any one State. This fact will justify the Federal Government in granting a Federal charter to such a combination to make and sell in interstate and foreign commerce the products of useful manufacture under such limitations as will secure a compliance with the anti-trust law. It is possible so to frame a statute that while it offers protection to a Federal company against harmful, vexatious, and unnecessary invasion by the States, it shall subject it to reasonable taxation and control by the States with respect to its purely local business. * * *

"Corporations organized under this act should be prohibited from acquiring and holding stock in other corporations (except for special reasons, upon approval by the proper Federal authority), thus avoiding the creation under national auspices of the holding company with subordinate corporations in different States, which has been such an effective agency in the creation of the great trusts and monopolies.

"If the prohibition of the anti-trust act against combinations in restraint of trade is to be effectively enforced, it is essential that the National Government shall provide for the creation of national corporations to carry on a legitimate business throughout the United States. The conflicting laws of the different States of the Union with respect to foreign corporations make it difficult, if not impossible, for one corporation to comply with their requirements so as to carry on business in a number of different States."

I renew the recommendation of the enactment of a general law providing for the voluntary formation of corporations to engage in trade and commerce among the States and with foreign nations. Every argument which was then advanced for such a law, and every explanation which was at that time offered to possible objections, have been confirmed by our experience since the enforcement of the anti-trust statute has resulted in the actual dissolution of active commercial organizations.

It is even more manifest now than it was then that the denunciation of conspiracies in restraint of trade should not and does not mean the denial of organizations large enough to be intrusted with our interstate and foreign trade. It has been made more clear now than it was then that a purely negative statute like the anti-trust law may well be supplemented by specific provisions for the building up and regulation of legitimate national and foreign commerce.

### GOVERNMENT ADMINISTRATIVE EXPERTS NEEDED TO AID COURTS IN TRUST DISSOLUTIONS.

The drafting of the decrees in the dissolution of the present trusts, with a view to their reorganization into legitimate corporations, has made it especially apparent that the courts are



not provided with the administrative machinery to make the necessary inquiries preparatory to reorganization, or to pursue such inquiries, and they should be empowered to invoke the aid of the Bureau of Corporations in determining the suitable reorganization of the disintegrated parts. The circuit court and the Attorney General were greatly aided in framing the decree in the Tobacco Trust dissolution by an expert from the Bureau of Corporations.

### FEDERAL CORPORATION COMMISSION PROPOSED.

I do not set forth in detail the terms and sections of a statute which might supply the constructive legislation permitting and aiding the formation of combinations of capital into Federal corporations. They should be subject to rigid rules as to their organization and procedure, including effective publicity, and to the closest supervision as to the issue of stock and bonds by an executive bureau or commission in the Department of Commerce and Labor, to which in times of doubt they might well submit their proposed plans for future business. It must be distinctly understood that incorporation under a Federal law could not exempt the company thus formed and its incorporators and managers from prosecution under the anti-trust law for subsequent illegal conduct, but the publicity of its procedure and the opportunity for frequent consultation with the bureau or commission in charge of the incorporation as to the legitimate purpose of its transactions would offer it as great security against successful prosecutions for violations of the law as would be practical or wise.

Such a bureau or commission might well be invested also with the duty already referred to, of aiding courts in the dissolution and re-creation of trusts within the law. It should be an executive tribunal of the dignity and power of the Comptroller of the Currency or the Interstate Commerce Commission, which now exercise supervisory power over important classes of corporations under Federal regulation.

The drafting of such a Federal incorporation law would offer ample opportunity to prevent many manifest evils in corporate

management to-day, including irresponsibility of control in the hands of the few who are not the real owners.

### INCORPORATION VOLUNTARY.

I recommend that the Federal charters thus to be granted shall be voluntary, at least until experience justifies mandatory provisions. The benefit to be derived from the operation of great businesses under the protection of such a charter would attract all who are anxious to keep within the lines of the law. Other large combinations that fail to take advantage of the Federal incorporation will not have a right to complain if their failure is ascribed to unwillingness to submit their transactions to the careful official scrutiny, competent supervision, and publicity attendant upon the enjoyment of such a charter.

### ONLY SUPPLEMENTAL LEGISLATION NEEDED.

The opportunity thus suggested for Federal incorporation, it seems to me, is suitable constructive legislation needed to facilitate the squaring of great industrial enterprises to the rule of action laid down by the anti-trust law. This statute as construed by the Supreme Court must continue to be the line of distinction for legitimate business. It must be enforced, unless we are to banish individualism from all business and reduce it to one common system of regulation or control of prices like that which now prevails with respect to public utilities, and which when applied to all business would be a long step toward State socialism.

### IMPORTANCE OF THE ANTI-TRUST ACT.

The anti-trust act is the expression of the effort of a freedom-loving people to preserve equality of opportunity. It is the result of the confident determination of such a people to maintain their future growth by preserving uncontrolled and unrestricted the enterprise of the individual, his industry, his ingenuity, his intelligence, and his independent courage.

For twenty years or more this statute has been upon the statute book. All knew its general purpose and approved. Many of its violators were cynical over its assumed impotence.



It seemed impossible of enforcement. Slowly the mills of the courts ground, and only gradually did the majesty of the law assert itself. Many of its statesmen-authors died before it became a living force, and they and others saw the evil grow which they had hoped to destroy. Now its efficacy is seen; now its power is heavy; now its object is near achievement. Now we hear the call for its repeal on the plea that it interferes with business prosperity, and we are advised in most general terms, how by some other statute and in some other way the evil we are just stamping out can be cured, if we only abandon this work of twenty years and try another experiment for another term of years.

It is said that the act has not done good. Can this be said in the face of the effect of the Northern Securities decree? That decree was in no way so drastic or inhibitive in detail as either the Standard Oil decree or the Tobacco decree; but did it not stop for all time the then powerful movement toward the control of all the railroads of the country in a single hand? Such a one-man power could not have been a healthful influence in the Republic, even though exercised under the general supervision of an interstate commission.

Do we desire to make such ruthless combinations and monopolies lawful? When all energies are directed, not toward the reduction of the cost of production for the public benefit by a healthful competition, but toward new ways and means for making permanent in a few hands the absolute control of the conditions and prices prevailing in the whole field of industry, then individual enterprise and effort will be paralyzed and the spirit of commercial freedom will be dead.

WM. H. TAFT.

THE WHITE HOUSE, *December 5, 1911.*

## APPENDIX A.

### Suits Brought and Prosecutions Instituted by the United States Under the Sherman Antitrust Law.

President Harrison's Administration, March 4, 1889, to March 4, 1893.

[William H. H. Miller, Attorney General, March 5, 1889, to March 6, 1893.]

1.

*United States* v. *Jellico Mountain Coal Company*, 43 Fed. Rep., 898; 46 Fed. Rep., 432.

(Circuit Court, M. D. Tennessee. October 13, 1890; June 4, 1891.)

Suit against the members of the "Nashville Coal Exchange," composed of various coal-mining companies operating mines in Kentucky and Tennessee, and of persons and firms dealing in coal in Nashville, formed for the purpose of fixing prices and regulating the output of coal.

A preliminary injunction was denied on October 13, 1890. Upon full hearing the court, on June 4, 1891, held the combination to be in violation of the antitrust law and enjoined the further carrying out of the agreement.

2.

*United States* v. *Greenhut et al.*, 50 Fed. Rep., 469.

(District Court, Massachusetts. May 16, 1892.)

A proceeding by indictment against the officers of the Distilling and Cattle Feeding Co. (Whisky Trust) for an alleged violation of the antitrust law.

Indictment quashed, as allegations were held not to constitute an offense under the statute.

2a.

*In re Corning*, 51 Fed. Rep., 205.

(District Court, N. D. Ohio. June 11, 1892.)

Application for a warrant of removal from Ohio to Massachusetts to answer to the indictment found in the *Greenhut case*. Application denied and prisoner discharged.

2b.

*In re Terrell*, 51 Fed. Rep., 213.

(Circuit Court, S. D. New York. June 28, 1892.)

Application for a writ of habeas corpus to secure a discharge from arrest and detention upon a warrant for removal from New York to Massachusetts to answer to the indictment found in the *Greenhut case*.

Petitioner discharged.

2c.

*In re Greene*, 52 Fed. Rep., 104.

(Circuit Court, S. D. Ohio. August 4, 1892.)

Petition for writ of habeas corpus to secure release from the custody of the marshal, by whom he was held awaiting an order for the removal of Greene to Massachusetts to answer to the indictment in the *Greenhut case*.

Prisoner discharged.

3.

*United States* v. *Nelson*, 52 Fed. Rep., 646.

(District Court, Minnesota. October 10, 1892.)

Indictment of a number of lumber dealers for conspiring together to raise the price of lumber in violation of the antitrust law.

Demurrer to indictment sustained, the court holding that an agreement between a number of dealers to raise prices, unless they controlled nearly the entire commodity, could not operate as a restraint of trade under the act.

4.

*United States* v. *Trans-Missouri Freight Association*, 53 Fed. Rep., 440; 58 Fed. Rep., 58; 166 U. S., 290.

(Circuit Court, Kansas. November 28, 1892.)

(Circuit Court of Appeals, Eighth Circuit. October 2, 1893.)

(United States Supreme Court. March 22, 1897.)

Bill filed January 6, 1892, to enjoin the operations of a combination of railroads engaged in interstate commerce, formed for the purpose of maintaining "just and reasonable rates," etc. Bill dismissed by Circuit Court; decree of dismissal affirmed by Circuit Court of Appeals, and reversed by the United States Supreme Court on March 22, 1897.

5.

*United States* v. *Workingmen's Amalgamated Council of New Orleans et al.*, 54 Fed. Rep., 994; 57 Fed. Rep., 85.

(Circuit Court, E. D. Louisiana. March 25, 1893.)

(Circuit Court of Appeals, Fifth Circuit. June 13, 1893.)

Suit to restrain defendants, a combination of workmen, from interfering with interstate and foreign commerce, in violation of the antitrust law. The injunction was granted and the law held to apply to combinations of laborers as well as capitalists.

This decree was affirmed by the Circuit Court of Appeals.



6.

*United States* v. *Patterson et al.*, 55 Fed. Rep., 605; 59 Fed. Rep., 280.

(Circuit Court, Massachusetts. February 28 and June 7, 1893.)

Cash register case. Indictment of members of a combination formed for the purpose of controlling the price of cash registers. A demurrer was sustained as to certain counts of the indictment and overruled as to others and leave granted to file special demurrers to the counts which were sustained. The special demurrers were heard on June 1, 1893, and the demurrers overruled, the court adhering to its former ruling. Letter of Attorney General dated October 16, 1893, shows case was allowed to lapse because of consolidation of complaining witness with defendants.

7.

*United States* v. *E. C. Knight Company* (*Sugar Trust*), 60 Fed. Rep., 306; 60 Fed. Rep., 934; 156 U. S., 1.

(Circuit Court, E. D. Pennsylvania. January 30, 1894.)

(Circuit Court of Appeals, Third Circuit. March 26, 1894.)

(United States Supreme Court. January 21, 1895.)

Bill in equity to enjoin the operations of the Sugar Trust, charged with a violation of the antitrust law. The bill was dismissed January 30, 1894. Appeal was taken to the Circuit Court of Appeals and the decree affirmed. From this decision an appeal was taken to the Supreme Court of the United States, where the decree of dismissal was affirmed.

## President Cleveland's Second Administration, March 4, 1893, to March 4, 1897.

[Richard Olney, Attorney General, March 6, 1893, to June 7, 1895; Judson Harmon, Attorney General, June 8, 1895, to March 5, 1897.]

1.

*United States* v. *Agler*, 62 Fed. Rep., 824.

(Circuit Court, Indiana. July 12, 1894.)

Information charging contempt of court in disobeying an injunction restraining Agler and others from interfering with interstate commerce and obstructing the mails. Information quashed. It was charged that Agler was a member of the American Railway Union, the members of which order were on a strike and had been enjoined under the

antitrust law from interfering with the carrying of the mails and from obstructing interstate commerce. This is one of the "Debs" cases.

2.

*United States* v. *Elliott*, 62 Fed. Rep., 801; 64 Fed. Rep., 27.

(Circuit Court, E. D. Missouri. July 6 and October 24, 1894.)

Suit to restrain Elliott, Debs, and others, members of the American Railway Union, from carrying out their unlawful conspiracy to interfere with interstate commerce and to obstruct the carrying of the mails, in violation of the antitrust law. Preliminary injunction granted. A demurrer to this bill was overruled.

3.

*United States* v. *Debs et al.*, 64 Fed. Rep., 724.

(Circuit Court, N. D. Illinois. December 14, 1894.)

Proceedings in contempt to punish Debs and others for disobeying an injunction restraining them from interfering with interstate commerce and with obstructing the mails, by means of a conspiracy, in violation of the antitrust law. Defendants found guilty and punished.

3a.

*In re Debs, petitioner*, 158 U. S., 564.

(United States Supreme Court. May 27, 1895.)

Proceedings instituted July 2, 1894. Application for a writ of habeas corpus to secure a discharge from imprisonment for disobeying an injunction of the Circuit Court for the Northern District of Illinois, restraining Debs and others from conspiring to interfere with interstate commerce, in violation of the antitrust law.

Petition for the writ denied.

4.

*United States* v. *Cassidy*, 67 Fed. Rep., 698.

(District Court, N. D. California. April 1 and 2, 1895.)

Cassidy and others were indicted under section 5440, United States Revised Statutes, for conspiring to commit offenses against the United States, which acts consisted in a combining and conspiring to restrain trade and commerce between the States, in violation of the antitrust law, and grew out of the Pullman strike in California. The trial lasted five months and resulted in a disagreement of the jury.



5.

*Moore* v. *United States*, 85 Fed. Rep., 465.

(Circuit Court of Appeals, Eighth Circuit. February 14, 1898.)

Indictment of the members of an association of dealers in coal at Salt Lake City for entering into a conspiracy to regulate the price of coal. Indictment returned November 4, 1895. Moore was tried and convicted in the District Court of Utah upon this indictment. The Circuit Court of Appeals reversed the judgment of conviction, for the reason that upon the admission of Utah as a State it was no longer a "Territory" within the meaning of the antitrust act, and the combination was not in restraint of interstate commerce, and the court therefore had no jurisdiction of the offense.

6.

*United States* v. *Joint Traffic Association*, 76 Fed. Rep., 895; 89 Fed. Rep., 1020; 171 U. S., 505.

(Circuit Court, S. D. New York. May 28, 1896.)

(Circuit Court of Appeals, Second Circuit. March 19, 1897.)

(United States Supreme Court. October 28, 1898.)

Suit instituted January 8, 1896. Bill in equity to enjoin the alleged violation of the antitrust law by a combination of railroads. The Circuit Court dismissed the bill, and the Court of Appeals affirmed the action of the Circuit Court. These judgments were reversed by the United States Supreme Court.

7.

*United States* v. *Addyston Pipe and Steel Company*, 78 Fed. Rep., 712; 85 Fed. Rep., 271; 175 U. S., 211.

(Circuit Court, E. D. Tennessee. February 5, 1897.)

(Circuit Court of Appeals, Sixth Circuit. February 8, 1898.)

(United States Supreme Court. December 4, 1899.)

Suit instituted December 10, 1896. Bill in equity to enjoin the operations of the Cast-Iron Pipe Trust, which attempted to control the price of cast-iron pipe. The bill was dismissed by the Circuit Court. The Circuit Court of Appeals reversed the decree of the Circuit Court and remanded the case, with instructions to enter a decree for the Government. On appeal to the Supreme Court the action of the Circuit Court of Appeals was affirmed.

8.

*United States* v. *Hopkins et al.*, 82 Fed. Rep., 529; 84 Fed. Rep., 1018; 171 U. S., 578.

(Circuit Court, Kansas. September 20, 1897.)

(Circuit Court of Appeals, Eighth Circuit. December 27, 1897.)

(United States Supreme Court. October 24, 1898.)

Suit instituted December 31, 1896. Bill to restrain the operations of the "Kansas City Live Stock Exchange," organized to control the shipments of live stock. The injunction was granted, but on appeal the Supreme Court reversed the decree of the Circuit Court and remanded the case, with instructions to dismiss the bill.

PRESIDENT MCKINLEY'S ADMINISTRATION—MARCH 4, 1897–SEPTEMBER 14, 1901.

[Joseph McKenna, Attorney General, March 5, 1897, to June 25, 1898; John W. Griggs, Attorney General, June 25, 1898, to March 29, 1901; Philander C. Knox, Attorney General, April 5, 1901, to June 30, 1904.]

1.

*Anderson* v. *United States*, 82 Fed. Rep., 998; 171 U. S., 604.

(Circuit Court, N. D. Missouri. ———.)

(Circuit Court of Appeals, Eighth Circuit. ———.)

(United States Supreme Court. October 24, 1898.)

Bill in equity to restrain the operations of "The Traders' Live Stock Exchange," of Kansas City, an association formed for the purpose of buying cattle on the market. This suit was instituted June 7, 1897, in the Circuit Court of the United States for the Western District of Missouri. Decree of temporary injunction was granted and the case appealed to the Circuit Court of Appeals for the Eighth Circuit. From there it was certified to the Supreme Court of the United States for instructions upon certain questions, under the provisions of section 6 of the act of March 3, 1891 (26 Stat., 828). The Supreme Court reversed the decree of the Circuit Court and remanded the case, with directions to dismiss the bill, holding that the acts complained of were not a violation of the antitrust law.

2.

*United States* v. *Coal Dealers' Association*, 85 Fed. Rep., 252.

(Circuit Court, N. D. California. January 28, 1898.)

Suit brought December 16, 1897. Bill for injunction to restrain the operations of a combination of coal dealers known as the "Coal Dealers' Association of California."

A temporary injunction was granted.



3.

*United States* v. *Chesapeake and Ohio Fuel Company et al.*, 105 Fed. Rep., 93; 115 Fed. Rep., 610.

(Circuit Court, S. D. Ohio. August 31, 1900.)

(Circuit Court of Appeals, Sixth Circuit. April 8, 1902.)

Bill filed May 8, 1899, to annul a contract and dissolve a combination of producers and shippers of coal in Ohio and West Virginia, engaged in mining coal and making coke intended for "Western shipment," under agreement to sell the same at not less than a memorandum price, to be fixed by an executive committee appointed by the producers. Defendants enjoined, contract declared void and illegal, and the combination dissolved.

Affirmed by Circuit Court of Appeals. No appeal taken.

PRESIDENT ROOSEVELT'S ADMINISTRATION—SEPTEMBER 14, 1901–MARCH 4, 1909.

[Philander C. Knox, Attorney General, April 5, 1901, to June 30, 1904; William H. Moody, Attorney General, July 1, 1904, to December 16, 1906; Charles J. Bonaparte, Attorney General, December 17, 1906, to March 4, 1909.]

1.

*United States* v. *Northern Securities Co., Great Northern R'y Co., Northern Pacific R'y Co. et al.*, 120 F. R., 721; 193 U. S., 197.

(Circuit Court, Minnesota. April 9, 1903.)

(United States Supreme Court. March 14, 1904.)

This suit was brought on March 10, 1902, in the Circuit Court of the United States for the District of Minnesota, to enjoin the defendant, the Northern Securities Co., from purchasing, acquiring, receiving, holding, voting, or in any manner acting as the owner of any of the shares of the capital stock of the two defendant railway companies, and to restrain the defendant railway companies from permitting the securities company to vote any of the stock of said railways, or from exercising any control whatsoever over the corporate acts of either of said railway companies, it being charged that the securities company was formed for the purpose of acquiring a majority of the capital stock of the two railway companies in order that it might in that way effect practically a consolidation of the two companies by controlling rates and restricting and destroying competition, in violation of the Sherman antitrust law.

The Circuit Court on April 9, 1903, entered a decree in favor of the Government as prayed in the petition, and this decree was, on March 14, 1904, affirmed by the Supreme Court of the United States.

2.

*United States* v. *Swift & Co. et al.*, 122 F. R., 529; 196 U. S., 375. Suit brought on May 10, 1902, in the Circuit Court of the United States for the Northern District of Illinois to restrain the defendants (commonly known as the Beef Trust), who are engaged in the buying of live stock and the selling of dressed meats, from carrying out an unlawful conspiracy entered into between themselves and with the various railway companies, to suppress competition and to obtain a monopoly in the purchase of live stock and in the selling of dressed meats. A preliminary restraining order was granted on May 20, 1902.

The defendants having demurred to the bill, the court, after hearing, on April 18, 1903, overruled the demurrers and granted a preliminary injunction. The defendants having failed to answer, the court, on May 26, 1903, entered an order making the decree final and perpetually enjoining the further operations of the trust.

The defendants, on August 14, 1903, appealed from the final decree of the Circuit Court to the Supreme Court of the United States, where decree was affirmed January 30, 1905.

3.

*United States* v. *The Federal Salt Company et al.* Suit brought in the Circuit Court of the United States for the Northern District of California, on October 15, 1902, to restrain the defendants (known as the Salt Trust) from unlawfully combining and conspiring to suppress competition in the manufacture and sale of salt in the States west of the Rocky Mountains, in violation of the Sherman antitrust law. A temporary restraining order was issued on that date, and the cause coming on for hearing, the court, on November 10, 1902, granted an injunction pendente lite, thus, in effect, making the restraining order perpetual.

No appeal was taken from this order.

4.

*United States* v. *The Federal Salt Company.* On February 28, 1903, the grand jury for the United States District Court for the Northern District of California returned an indictment against the Salt Trust for having violated the antitrust law.



On May 12, 1903, the trust pleaded guilty, and the court sentenced it to pay a fine of $1,000, which was paid.

5.

*United States* v. *Jacksonville Wholesale Grocers' Association.* A proceeding in equity, instituted on September 12, 1903, in the United States Circuit Court for the Southern District of Florida, for the purpose of dissolving a combination of wholesale grocers, operating in violation of the antitrust law.

November 1, 1907, dismissed.

6.

*United States* v. *General Paper Co. et al.* December 27, 1904, a bill in equity was filed in the Circuit Court of the United States for the District of Minnesota against the General Paper Co. and twenty-three other corporations engaged in the manufacture and sale of paper, alleging that they had entered into a combination and conspiracy to restrain trade and commerce in the manufacture of news print, manila, fiber, and other papers by making the General Paper Co. their common sales agent. On May 11, 1906, the court ordered judgment in favor of the Government, dissolving the combination and affording all relief prayed in the bill. (See also *Nelson* v. *United States,* 201 U. S., 92; *Alexander* v. *United States,* id., 117.)

7.

*United States* v. *Armour & Co. et al.* After the affirmance by the Supreme Court of the decree of the Circuit Court in *United States* v. *Swift & Company* (above referred to) complaints from various quarters were made to the department that the combination still continued. The department thereupon began an exhaustive inquiry before the grand jury for the northern district of Illinois, which resulted in the return of an indictment on July 1, 1905, against Armour & Co., J. Ogden Armour, president; Patrick A. Valentine, treasurer; Arthur Neekler, general manager; Thomas J. Connors, superintendent, and Samuel A. McRoberts, assistant treasurer, of Armour & Co.; the Armour Packing Co., and Charles W. Armour, president; Swift & Co., and Louis F. Swift, president; Lawrence A. Carton, treasurer; D. Edwin Hartwell, secretary, and Albert H. Veeder and Robert C. McManus and Arthur F. Evans, agents of Swift & Co.; the Fairbank Canning Co., and Edward Morris, vice

president; Ira N. Morris, secretary of the Fairbank Canning Co.; the Cudahy Packing Co., and Edward A. Cudahy, vice president and general manager of the Cudahy Packing Co.

Against this indictment many preliminary objections were urged. All were disposed of in favor of the Government, except certain special pleas of immunity in bar, based upon information concerning the matters for which the defendants were indicted, which they had given to the Department of Commerce and Labor. The court sustained the pleas so far as the individual defendants were concerned and overruled them with respect to the corporations.

8.

*United States* v. *MacAndrews & Forbes Company et al.* (149 Fed., 823; 212 U. S., 585.) In June, 1906, the grand jury returned an indictment against the MacAndrews & Forbes Co., the J. S. Young Co., a corporation of Maine, and Karl Jungbluth and Howard E. Young, their respective presidents, for illegally combining and conspiring to regulate the interstate trade and sale in licorice paste, an article used in the manufacture of plug and smoking tobacco, snuff, and cigars. Defendants entered pleas of not guilty, with leave to withdraw or demur on or before July 9, 1906. July 9, 1906, demurrers filed by all of the defendants. December 4, 1906, demurrers overruled. December 19, 1906, trial commenced. January 10, 1907, MacAndrews & Forbes Co. was found guilty on first and third counts of indictment, the J. S. Young Co. guilty on first and third counts; verdict of acquittal as to individual defendants. MacAndrews & Forbes Co. fined $10,000. J. S. Young Co. fined $8,000.

8a.

*The Tobacco Trust Cases.* (*Hale* v. *Henkel,* 201 U. S., 43; *McAlister* v. *Henkel,* id., 90; 149 Fed., 823; 212 U. S., 585.) These cases grew out of an investigation by a Federal grand jury in the southern district of New York of the American Tobacco Co. and the MacAndrews & Forbes Co., believed to be violating the antitrust laws, the matter having been brought to the attention of the grand jury by the officers of the Department of Justice, special counsel having been appointed for the purpose of investigation and prosecution. Subpœnas duces tecum were served upon the officers of the companies directing them to produce papers and other documentary evidence belonging to the corporations. They refused to obey the subpœna to answer questions propounded to them. The Circuit Court adjudged them in contempt and committed them until they should produce



the books and answer the questions. They applied to another judge of the same court for writs of habeas corpus, which, upon hearing, were discharged. Upon appeal the Supreme Court affirmed the orders denying the writs.

9.

*United States* v. *Metropolitan Meat Company et al.* Bill filed in equity in October, 1905, in the United States Circuit Court for Hawaii, to restrain the operation of alleged unlawful combinations in restraint of the trade in beef and beef products. Demurrer to bill overruled October 2, 1906. Pending.

10.

*United States* v. *Nome Retail Grocers' Association.* November 4, 1905, the department directed the United States attorney for the Second Division of Alaska to file a bill in equity against the Nome Retail Grocers' Association, alleging a combination to fix prices and to suppress competition. Suit was promptly instituted, whereupon the defendants agreed to the entry of a decree granting all the relief prayed for in the petition. A decree dissolving the combination was entered accordingly.

11.

*United States* v. *Terminal Railroad Association of St. Louis et al.* Petition filed in Circuit Court of United States for the Eastern District of Missouri on December 1, 1905, to enjoin the defendant railroads from continuing an unlawful combination entered into between them to operate Eads Bridge and Merchants Bridge as a common agency of interstate commerce. Upon disagreement of Circuit Judges case was carried to the Supreme Court and was remanded by that court for further proceedings. Government then attempted to secure rehearing in the Circuit Court and failed, and appealed to the Supreme Court, where the case was argued and is awaiting decision.

12.

*United States* v. *Allen & Robinson et al.* Bill filed in October in United States Circuit Court for the District of Hawaii, alleging unlawful combination to control the trade in lumber in that Territory. Answers filed January 2, 1906. Pending.

13.

*United States* v. *Otis Elevator Co. et al.* Bill filed March 7, 1906, in the United States Circuit Court for the Northern District of California against the Otis Elevator Co. and a number of other corporations and individuals, in which it

was alleged that they were maintaining a combination in restraint of trade in the matter of the manufacture and sale of elevators. June 1, 1906, a decree was entered by consent dissolving the combination and granting the relief prayed.

14.

*United States* v. *F. A. Amsden Lumber Company et al.* Indictment returned in the District Court of Oklahoma May 4, 1906, for violation of the Sherman Act in restricting competition and maintaining prices in the sale of lumber. May 13, 1907, change of venue granted to Grant County. September 25, 1907, pleas of guilty and fines imposed aggregating $2,000, which were paid.

15.

*United States* v. *National Association of Retail Druggists et al.* Bill in equity filed May 9, 1906, in the United States Circuit Court for the District of Indiana against the National Association of Retail Druggists, alleging a combination in restraint of interstate trade in the sale of drugs and proprietary medicines. May 9, 1907, final decree entered by agreement, giving the Government all the relief prayed for in the petition.

16.

*United States* v. *Virginia-Carolina Chemical Company et al.* May 25, 1906, the Federal grand jury for the Middle District of Tennessee, upon information furnished by the Department of Justice, returned an indictment against 31 corporations and 25 individuals engaged in the fertilizer business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Arkansas, and Tennessee, charging them with engaging in a conspiracy in violation of the Federal antitrust act and with conspiring to commit an offense against the United States, viz, the aforesaid conspiracy, in violation of section 5440 of the Revised Statutes. The fertilizer manufacturers combined to fix the price of fertilizers in the territory mentioned and to apportion the trade among themselves according to an agreed percentage. July 11, 1906, all the defendants appealed to the Supreme Court of the United States from an order of the Circuit Court of the Eastern District of Virginia denying the right of habeas corpus and remanding them to the custody of the marshal for removal to the Middle District of Tennessee for trial. The case before the Supreme Court was argued on December 3, 1906, and on March 4, 1907, the judgment of the Circuit Court for the Eastern District of



Virginia was reversed and the case remanded to that court for further proceedings in accordance with the opinion of the Supreme Court. April 17, 1908, various motions, pleas in abatement, and demurrers filed. July 3, 1908, certain motions and demurrers overruled, plea in abatement allowed, and indictment quashed.

17.

*United States* v. *American Ice Company et al.* July 12, 1906, indictment returned in the Supreme Court of the District of Columbia, charging an unlawful agreement to control prices and restrict competition in the sale of ice. Case pending.

18.

*United States* v. *Chandler Ice and Cold Storage Plant et al.* September 19, 1906, indictment returned in the District Court for the Territory of Oklahoma against the Chandler Ice and Cold Storage Plant and others, charging a combination to apportion territory in the matter of the sale of ice. May 5, 1907, demurrer filed by defendant Groves and overruled. May 20, 1907, demurrer filed by Chandler Ice and Cold Storage Plant. Dismissed.

19.

*United States* v. *Alfred M. Gloyd et al.* September 21, 1906, indictment returned against Alfred M. Gloyd and others in the District Court for the Territory of Oklahoma, charging a combination to maintain prices and restrict competition in the sale of lumber. Dismissed.

20.

*United States* v. *People's Ice and Fuel Company, a corporation,* and *W. B. Lount.* October 23, 1906, indictment returned in the District Court for the Territory of Arizona, charging a combination to control prices and restrict competition in the sale of ice. January 5, 1907, trial commenced. Verdict not guilty as to People's Ice and Fuel Co. and company held to next grand jury. Trial of W. B. Lount continued over term. October 16, 1907, plea in bar filed. October 17, 1907, plea in bar sustained.

21.

*United States* v. *Demund Lumber Company et al.* October 23, 1906, indictment returned in the District Court for the Territory of Arizona, charging a combination to control prices and restrict competition in the sale of lumber. January 2, 1907, trial commenced. Verdict of not guilty as to Demund Lumber Co. January 7, 1907, cases against Chamberlain Lumber Co. and Valley Lumber Co. continued over

term. May 8, 1907, motion made to court to instruct for acquittal. Motion argued and taken under advisement. May 9, 1907, motion sustained and verdict of acquittal returned.

22.

*United States* v. *Phoenix Wholesale Meat and Produce Company, a corporation, P. T. Hurley, and S. J. Tribolet.* October 23, 1906, indictment returned in the District Court for the Territory of Arizona, charging a combination to control prices and restrict competition in the sale of meats. January 7, 1907, trial commenced. Verdict of not guilty as to Phoenix Wholesale Meat & Produce Co. January 8, 1907, indictment against Hurley dismissed. Verdict of guilty as to defendant S. J. Tribolet. January 12, 1907, Tribolet sentenced to pay fine of $1,000. January 9, 1907, case against Phoenix Wholesale Meat & Produce Co. dismissed. Appeal to the Supreme Court of the Territory of Arizona. Supreme Court affirmed decision of lower court. Fine paid.

23.

*United States* v. *Standard Oil Company of N. J. et al.* (United States Circuit Court En. Mo., 173 Fed., 177.) (United States Supreme Court, 221 U. S., 1.)

November 15, 1906, bill in equity filed in United States Circuit Court for the Eastern District of Missouri against the Standard Oil Co. and others, in which it is alleged that they are maintaining a combination in restraint of trade in the manufacture and sale of petroleum. Case argued in Circuit Court April, 1909; decision by unanimous court in favor of the Government November 20, 1909. Appealed to Supreme Court; argued March, 1910, reargued January, 1911, and judgment affirmed May 15, 1911.

24.

*United States* v. *T. B. Hogg et al.* December 8, 1906, indictment returned in the District Court for the Territory of Oklahoma, charging a combination and conspiracy in restraint of trade and commerce in the sale of lumber. March 25, 1907, plea of not guilty. Change of judge granted on application of defendants. Dismissed.

25.

*United States* v. *Atlantic Investment Company et al.* February 11, 1907, indictment returned in the United States District Court for the Southern District of Georgia against the Atlantic Investment Co. and others, charging a combination in restraint of trade and commerce in the matter of the manufacture and sale of turpentine. February 18,



1907, four corporations and two individuals, defendants to this indictment, entered pleas of guilty, and the court imposed a fine of $5,000 upon each of the six defendants, making a total of $30,000.

26.

*United States* v. *American Seating Company et al.* March 12, 1907, indictment returned in the District Court of the Northern District of Illinois charging a violation of the Sherman antitrust law by engaging in a combination in restraint of trade in the manufacture and sale of school and church furniture. April 1, 1907, defendant corporations entered pleas of guilty, with one exception. May 20, 1907, fines imposed aggregating $43,000. Defendant E. H. Stafford Manufacturing Co. filed demurrer April 3, 1907. May 31, 1907, demurrer overruled and plea of not guilty entered.

27.

*United States* v. *American Seating Company et al.* March 12, 1907, bill in equity filed in the United States Circuit Court for the Northern District of Illinois against the American Seating Co. and others, in which it is alleged that they are maintaining a combination in restraint of trade in the manufacture and sale of school and church furniture. August 15, 1907, decree entered granting perpetual injunction against all defendants, except E. H. Stafford Manufacturing Co., E. H. Stafford, E. M. Stafford, and E. G. Bentley.

28.

*United States* v. *Santa Rita Mining Company and Santa Rita Store Company.* April 4, 1907, indictment returned in the district of New Mexico charging a violation of section 3 of the Sherman antitrust law for engaging in a combination in restraint of trade. Demurrer filed and overruled. Fine of $1,000 imposed on each defendant; total, $2,000. Appeal taken to the Supreme Court of the Territory of New Mexico.

29.

*United States* v. *The Reading Company et al.* United States Circuit Court, En. Pa., 183 Fed., 427. June 12, 1907, bill in equity filed in the Circuit Court for the Eastern District of Pennsylvania to dissolve a combination among the anthracite coal-carrying roads and others, alleged to be operating in violation of the Sherman law. December 8, 1910, decision dismissing petition, except as to Temple Iron Co.,

which was adjudged illegal. Cross appeals taken to Supreme Court, where case was argued in October, 1911. Awaiting decision.

30.

*United States* v. *National Umbrella Frame Company et al.* July 1, 1907, indictment returned in the District Court for the Eastern District of Pennsylvania charging a conspiracy to restrain interstate trade and commerce in the manufacture and sale of umbrella material, in violation of the Sherman antitrust law and section 5440, R. S. Pleas of guilty entered and fines aggregating $3,000 imposed.

31.

*United States* v. *American Tobacco Company et al.*
(United States Circuit Court, Sn. N. Y., 164 Fed., 700.)
(United States Supreme Court, 221 U. S., 106.)

Bill in equity filed July 10, 1907, by the United States against the American Tobacco Co. and others, in which it was alleged that they were maintaining a combination in restraint of trade and commerce in the manufacture and sale of tobacco. November 7, 1908, decision rendered in favor of the Government, except as to individual defendants and certain foreign and other corporations. Cross appeals were taken to the Supreme Court, where case was argued March, 1910, and reargued January, 1911. May 29, 1911, a decision was rendered sustaining the Government on every point.

32.

*United States* v. *E H. Stafford Manufacturing Company et al.* July 10, 1907, indictment returned in the District Court for the Northern District of Illinois charging a violation of the Sherman antitrust law by engaging in a combination in restraint of trade in the manufacture and sale of school and church furniture. Case pending.

33.

*United States* v. *E. I. du Pont de Nemours & Co. et al.* July 30, 1907, bill in equity filed in the Circuit Court for the District of Delaware against E. I. du Pont de Nemours & Co. and others, in which it is alleged that they are maintaining a combination in restraint of trade in the manufacture and sale of gunpowder and other high explosives. June 21, 1911, a decision was rendered holding combination illegal and ordering its dissolution. Negotiations are now under way for an agreement between counsel as to a form of decree of dissolution and injunction, to be submitted to the court for approval.



34.

*United States* v. *One Hundred and Seventy-five Cases of Cigarettes.* October 28, 1907, information filed in the District Court for the Eastern District of Virginia covering the seizure of 175 cases of cigarettes under section 6 of the Sherman Antitrust Act. Case pending.

35.

*United States* v. *H. D. Corbett Stationery Company et al.* November 1, 1907, indictment returned in the District Court for the District of Arizona charging a combination in restraint of trade. November 4, 1907, demurrer filed. November 14, 1907, demurrers sustained and defendants referred to next grand jury. October 28, 1908, reindicted. November 6, 1908, verdict not guilty.

36.

*United States* v. *Union Pacific Coal Company et al.*, 173 Fed., 737. November 20, 1907, indictment returned in the District Court for the District of Utah, charging a conspiracy to violate and a violation of the Sherman Act. January 6, 1908, demurrer filed. March 2, 1908, demurrer sustained as to first count and overruled as to second count. December 3, 1908, verdict guilty. March 29, 1909, fines aggregating $4,000 imposed. November, 1909, judgment reversed.

37.

*United States* v. *Chas. L. Simmons et al.* January 20, 1908, indictment returned in the District Court for the Southern District of Alabama charging a combination in restraint of trade and commerce in the matter of the manufacture and sale of plumbers' supplies. December 1, 1910, pleas of guilty, and fines aggregating $265 imposed.

38.

*United States* v. *Union Pacific Railroad Company et al.* February 1, 1908, a bill in equity was filed in the Circuit Court of the United States for the District of Utah, charging a combination and conspiracy in violation of the Sherman Act on the part of the so-called Harriman lines. June 23, 1911, decision by Circuit Court to the effect that the roads involved were not competing lines and hence the combination was not a violation of law, Hook, J., dissenting. The Government has appealed to Supreme Court. Case set for argument at January term, 1912.

39.

*United States* v. *E. J. Ray et al.* February 14, 1908, indictment returned in the Circuit Court for the Eastern District of Louisiana against seventy-two laborers, charging a combination and conspiracy in restraint of foreign trade and commerce, in violation of the Sherman Act.

40.

*United States* v. *E. J. Ray et al.* February 15, 1908, indictment returned in the Circuit Court for the Eastern District of Louisiana against seventy-two laborers, charging a combination and conspiracy in restraint of interstate trade and commerce, in violation of the Sherman Act. January 26, 1911, cases consolidated for trial. Verdict of guilty as to three defendants and fines amounting to $110 imposed.

41.

*United States* v. *Joseph Stiefvater et al.* February 15, 1908, indictment returned in the United States Circuit Court for the Eastern District of Louisiana, charging a combination in restraint of trade and commerce in the matter of the manufacture and sale of plumbers' supplies. June 25, 1910, dismissed.

42.

*United States* v. *American Naval Stores Company et al.* (151 Fed., 834; charge to grand jury, 186 Fed., 592). April 11, 1908, indictment returned in the United States Circuit Court for the Southern District of Georgia, charging a combination in restraint of trade and commerce in the matter of the manufacture and sale of turpentine. May 10, 1909, verdict guilty as to five individual defendants. Fines aggregating $17,500 imposed and two defendants sentenced to three months in jail. Appealed to Circuit Court of Appeals and judgment affirmed. Certiorari granted to Supreme Court, where case is now pending.

43.

*United States* v. *New York, New Haven, and Hartford Railroad Company et al.* (165 Fed., 742.) May 22, 1908, a bill in equity was filed in the Circuit Court of the United States for the District of Massachusetts, charging the New Haven Co. with combining and attempting to combine under one common control the various railroad and electric railway systems in New England in violation of the Sherman Act.

Dismissed June 26, 1909.

44.

*United States* v. *John H. Parks et al.* June 16, 1908, indictment returned in the Circuit Court of the United States for the Southern District of New York, charging a combination in restraint of trade in the matter of the manufacture and sale of paper. June 19, 1908, defendants plead guilty and sentenced to pay fines aggregating $50,000, which were paid.



PRESIDENT TAFT'S ADMINISTRATION, MARCH 4, 1909.

[Geo. W. Wickersham, Attorney General, March 4, 1909.]

1.

*United States* v. *American Sugar Refining Company et al.* Indictment under Sherman law July 1, 1909. A plea of the statute of limitations was interposed by the defendant Kissell, which was taken to the Supreme Court, where it was decided in favor of the Government. (See *U. S.* v. *Kissell*, 218 U. S., 601.) Pending.

2.

*United States* v. *Albia Box & Paper Company et al.* December 7, 1909, indictment returned in Southern District of New York charging combination in restraint of trade in paper board. February 7, 1910, all defendants plead guilty and fines aggregating $57,000 were assessed.

3.

*United States* v. *John S. Steers et al.* Indictment returned in Eastern District of Kentucky February 17, 1910, charging conspiracy to restrain trade. This is the so-called *"Night Rider" case* where the restraint consisted in preventing the shipment of tobacco in interstate commerce by means of violence and intimidation. After the overruling of demurrers and various pleas in abatement a trial was had, and on April 16, 1910, a verdict of guilty was returned as to eight of twelve defendants and fines aggregating $3,500 imposed. Appealed to Circuit Court of Appeals, argued November, 1911, and awaiting decision.

4.

*United States* v. *Imperial Window Glass Company et al.* Indictment found in western Pennsylvania April 7, 1910, charging combination and conspiracy to enhance the price of window glass. Demurrers to the indictment were overruled, and on November 10, 1910, pleas of nolo contendere were entered and fines aggregating $10,000 and costs were imposed.

5.

*United States* v. *National Packing Company et al.* Indictment returned in Northern District of Illinois March 2, 1910, charging combination to restrain trade in fresh meats. Demurrer to indictment sustained June 23, 1910.

6.

*United States* v. *National Packing Company et al.* Northern Illinois. Bill in equity charging combination in restraint of trade in fresh meats and praying for dissolution filed March 21, 1910. Dismissed in order to facilitate the prosecution of later criminal case.

7. *United States* v. *Armour Packing Company et al.* Indictment returned at Savannah, Ga., in April, 1910, charging combination to control prices and restrict competition. Case now pending.

8. *United States* v. *Missouri Pacific Railroad Company and twenty-four other railroads.* Petition to restrain violation of Sherman law filed May 31, 1910, and temporary restraining order issued on that day enjoining advances in freight rates in western trunk-line territory, which would have become effective June 1, 1910. Thereupon the railroads, after consultation with the President, withdrew their proposed advances in freight rates, and after the passage of the act of June 18, 1910, the matter was referred to the Interstate Commerce Commission. Thereafter the Interstate Commerce Commission enjoined the rate advances which the temporary restraining order obtained by the department on May 31, 1910, had prevented from going into effect.

9. *United States* v. *Southern Wholesale Grocers' Association.* Bill in equity charging combination to regulate prices of necessities of life, filed at Birmingham, Ala., June 9, 1910.

An agreement was reached between the Government and defendant's counsel, and a decree prepared, submitted to, and passed by the court October 17, 1911, perpetually restraining the association, its officers and members, from doing any and all of the acts complained of.

10. *United States* v. *Great Lakes Towing Company et al.* Petition filed in Northern District of Ohio on June 19, 1910, against an alleged combination of towing facilities on the Great Lakes. The taking of testimony is nearing completion, and the case will be assigned for an early hearing.

11. *United States* v. *Chicago Butter & Egg Board.* Bill asking for dissolution, filed at Chicago June 13, 1910. A demurrer to the petition was sustained with leave to amend. An amended bill has been filed and the case is now pending.

12. *United States* v. *Frank Hayne, James A. Patten et al.*, 180 Fed., 946. Indictments returned, New York City, against alleged cotton-pool conspirators, August 4, 1910. Demurrers were sustained as to certain counts of indictment and overruled as to others, and the Government appealed to the Supreme Court, where case was argued November, 1911. Awaiting decision.



13. *United States* v. *Standard Sanitary Manufacturing Company et al.* Petition filed at Baltimore July 22, 1910, charging a combination, under cover of a patent licensing arrangement, to restrain competition and enhance prices of enamel ware. Four volumes of testimony was taken, and case set for argument at Richmond on June 15, 16, and 17, 1911. In a decision rendered October 13, 1911, the court sustained all the Government's contentions.

14. *United States* v. *Louis F. Swift et al.* Indictment returned by the grand jury at Chicago, in September, 1910, against ten prominent individuals engaged in the meat-packing industry. Defendants have filed numerous pleas in bar, demurrers, etc., all of which were decided in favor of the Government, and an early trial will be had. Defendants applied to Circuit Judge Kohlsaat for writ of certiorari based on contention that antitrust law was unconstitutional. Petition dismissed. Defendants appealed to Supreme Court and gave notice of motion December 4, 1911, for stay of trial pending appeal. Trial postponed until December 6, 1911.

15. *United States* v. *John Reardon & Sons Company and Consolidated Rendering Co.* Indicted jointly by Federal grand jury at Boston in October, 1910. Demurrer to indictment sustained June 23, 1911.

16. *United States* v. *Ferdinand Sulzberger, doing business under the name of John Reardon & Sons Company, and Horatio W. Heath, of Boston, doing business as the Consolidated Rendering Company.* Jointly indicted at Boston in October, 1910, for violation of the Sherman law. Demurrer to indictment sustained June 23, 1911.

17. *United States* v. *Horatio W. Heath and Cyrus S. Hapgood.* Indictment returned in October at Boston, charging violation of the Sherman law. Demurrer to indictment sustained June 23, 1911.

(NOTE.—In the last three indictments, which were found simultaneously, the Government charges that the defendants have attempted to divide territory between themselves throughout New England, so as to avoid competition and drive out competitors in the hide and rendering business.)

18.

*United States* v. *Standard Sanitary Manufacturing Company et al.* In addition to the above suit in equity (No. 13, supra), indictments were returned by grand jury at Detroit on December 6, 1910, against the same corporations and individuals charging the same acts. Various demurrers and dilatory pleas have been filed, argued, and overruled, and the case will be heard during the present fall term of court.

19.

*United States* v. *American Sugar Refining Company et al.* A suit in equity was filed at New York on November 28, 1910, against this corporation, its officers and agents, and its owned and controlled corporations, attacking it as a combination in restraint of trade and praying for its dissolution. Demurrers to bill set for argument December, 1911.

20.

*United States* v. *General Electric Company et al.* Bill in equity filed at Cleveland, Ohio, on March 3, 1911, charging a combination in incandescent electric lamps. This suit is the outcome of an extensive investigation into the electrical industry. Like the enameled-ware combination, it is founded on a cross-licensing arrangement under patents.

A formal decree has been agreed upon between counsel for the Government and the defendant companies, and was submitted to and passed by the Circuit Court October 12, 1911.

21.

*United States* v. *Purrington et al.* Indictment returned in the Northern District of Illinois September 14, 1910, charging combination to restrain trade in paving bricks and paving blocks. Pending.

22.

*United States* v. *Hamburg-Amerikanische Packetfahrt Actien Gesellschaft and others.* Trans-Atlantic steamship pool. Combination of steamship lines regulating steerage traffic on the Atlantic Ocean. Suit filed January 4, 1911, at New York City. Demurrers to bill set for argument December, 1911.

23.

*United States* v. *Eastern States Retail Lumber Dealers' Association.* Suit in equity filed at New York on May 19, 1911, charging the Eastern States Lumber Dealers' Association,



its officers and members, with a conspiracy in restraint of trade through the instrumentality of black lists and trade agreements.

24.

*United States* v. *Isaac Whiting, John K. Whiting, Charles H. Hood, Edward J. Hood, and William A. Graustein.* Indictment returned by the grand jury at Boston, Mass, on May 26, 1911, charging a combination to restrain trade in milk throughout the New England States.

25.

*United States* v. *Isaac Whiting, John K. Whiting, Charles H. Hood, Edward J. Hood, and William A. Graustein, and William A. Hunter, Secretary of Producers' Co.* May 26, 1911, indictment returned by the grand jury at Boston, Mass., charging a conspiracy to restrain trade in milk throughout the New England States.

26.

*United States* v. *Lumber Secretaries' Bureau of Information et al.* Indictment returned June 23, 1911, in the Northern District of Illinois, charging that the secretaries of 14 retail lumbermen's associations, covering 23 States from Pennsylvania to the Pacific coast, were in a conspiracy by means of a central controlling bureau to control the marketing of lumber by forcing the product through the retailer to the consumer, and restraining the trade of the manufacturer, wholesaler, and consumer, and eliminating competition for the trade of the consumer.

27.

*United States* v. *Philip H. W. Smith et al.* Indictments returned at New York City June 29, 1911, against various individuals, charging violations of sections 1 and 2 of the antitrust law through the conduct and operation of the Underground Power Cable Association, Telephone Cable Association, Fine Magnet Wire Association, Wire Rope Manufacturers, Horseshoe Manufacturers' Association, Lead-encased Rubber Cable Association, and the Rubber-covered Wire Association. To date nearly all the defendants have appeared and pleaded, and fines aggregating $128,700 have been imposed.

28.

*United States* v. *Periodical Publishing Company.* Bill in equity filed in New York in June, 1911, against the members of the so-called Magazine Trust.

29.

*United States* v. *Jay B. Pearce et al.* Indictment returned against certain manufacturers and jobbers at Cleveland, Ohio, July 19, 1911, for combination and conspiracy in the manufacture and sale of wall paper.

30.

*United States* v. *Lake Shore & Michigan Southern R. R., Chesapeake & Ohio R. R., Hocking Valley R. R., Toledo & Ohio Central Ry., Kanawha & Michigan Ry., Zanesville & Western R. R., and others.* Bill in equity filed at Columbus, Ohio, August 4, 1911, to enjoin combination and conspiracy in restraint of trade.

31.

*United States* v. *Edward E. Hartwick et al.* Petition filed at Detroit, Mich., August 31, 1911, alleging conspiracy and unlawful restraint of trade on the part of members of the Michigan Retail Lumber Dealers' Association, The Scout Publishing Co., and the Lumber Secretaries' Bureau of Information.

32.

*United States* v. *Standard Wood Company et al.* Petition filed in the Circuit Court at New York City in September, 1911, against the members of the so-called Kindling Wood Trust, praying for injunction against the further carrying into effect of trade agreements and combination and conspiracy to monopolize trade.

33.

*United States* v. *Hunter Milling Company, Blackwell Milling and Elevator Company, and Frank Foltz.* Indictment returned by grand jury to District Court for the Western District of Oklahoma, September 10, 1911, on one count, charging violation of section 1 of the Sherman Act.

34.

*United States* v. *S. W. Winslow, Wm. Barbour, E. P. Howe, Ed. P. Hurd, Geo. W. Brown, and Jas. J. Storrow.* Two indictments returned by the grand jury at Boston, Mass., September 19, 1911, charging combination, conspiracy, and monopoly in trade in shoe machinery.

35.

*United States* v. *The Colorado and Wyoming Lumber Dealers' Association and The Lumber Secretaries' Bureau of Information.* Bill in equity filed at Denver, Colo., September 25, 1911, for injunction against defendants for conspiracy to restrain trade in lumber and its products.



36.

*United States* v. *Willard G. Hollis et al.* Petition filed in October, 1911, at St. Paul, Minn., in the United States Circuit Court, against the Lumbermen's Secretaries' Bureau of Information, The Lumberman Publishing Company, and certain individuals, alleging conspiracy and combination in the lumber trade.

37.

*United States* v. *United States Steel Corporation and others.* Petition for injunction and dissolution filed at Trenton, N. J., October 27, 1911.

○

Date Due

~~Dec 19~~
May 7
Feb 6 '38

JUL 13 1956

MAY 31 1957

COLUMBIA UNIVERSITY
0032056001

225
Un35 US President
Message on anti-trust

MAY 31 1961 A. Schefrin 321 Liv.

NEH

MAR 2 01994

MSH 01044

SEP 26 1933

*END OF TITLE*